IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.171 OF 2001

DIST. BOMBAY

Chandrakant Khandu Sonavane,)
Indian Inhabitant, residing at Room)
No.55, Shiv Shakti Nagar, Behind)
Building No.7, Dharavi, Mumbai – 400)
017 (At present lodged in Yeravada)
Central Prison.)) ... Appellant/Accused

Versus

The State of Maharashtra) ... Respondent

Mr. Naveen Chomal for the appellant-accused.

Dr. F.R. Shaikh, A.P.P. for the respondent-State.

CORAM : SMT. RANJANA DESAI &
D.G. KARNIK, JJ.

DATE ON WHICH THE JUDGMENT RESERVED : 4TH APRIL, 2006.

DATE ON WHICH THE JUDGMENT

PRONOUNCED : 12TH APRIL, 2006.

JUDGMENT : (Per Smt. Ranjana Desai, J.)

1. The appellant was tried in the Sessions Court at Mumbai in Sessions Case No.1177 of 1997 for offences punishable under sections 302 and 307 of the Indian Penal Code (for short, "the IPC") for having committed the murder of one Vikas Shinde (for short, "the deceased") and for attempting to commit murder of Vijay Babu Kunchikurve, Umesh Dattaram Angad, Shivanand Maholkar and one Vasant Batkar, with a knife.

2. It is the case of the prosecution that on 11/7/1997 at about 9.00 p.m. PW-2 Vijay, PW-3 Kisan, PW-4 Umesh, PW-5 Shivanand, the deceased and one Daji Parab were having liquor near one liquor den at Lalpatra Chawl, Dharavi Road. At that time, the appellant came there with his friend Gabbar. PW-4 Umesh teased the appellant. He referred to the appellant as "Nalucha yar". Therefore, a quarrel took place between PW-4 Umesh and the appellant. Their friends intervened and separated them.

3. According to the prosecution, after drinking liquor, PW-3 Kisan

and PW-5 Shivanand were playing with the empty liquor bottles. PW-5 Shivanand was injured by pieces of broken glass bottle. He suffered injuries near his eye-brow and chin. Therefore, they took him to Sion Hospital in a taxi. He was taken to the Emergency Ward. PW-3 Kisan stayed near PW-5 Shivanand. PW-5 Shivanand was treated for his injuries. Other friends went to see the sister of their friend, who was admitted in Sion Hospital after a vehicular accident.

4. According to the prosecution, the appellant came to Sion Hospital at about 10.20 p.m. He came to the Casualty Ward with a knife. The other friends had returned to the Casualty Ward after seeing the sister of their friend. The appellant started quarrelling with the deceased. There was exchange of words between the two. The appellant stabbed the deceased in the Casualty Ward. Others started running away. The appellant started running after the deceased with knife. Near the public telephone booth, the appellant raised the knife to stab the deceased. PW-3 Kisan tried to save the deceased. The appellant threatened to kill him. PW-3 Kisan retreated. The appellant stabbed PW-2 Vijay in the stomach with the knife and he also stabbed on the left leg of PW-4 Umesh when they tried to save the deceased. The appellant also stabbed one Vasant, the security guard of the hospital, who tried to prevent him from attacking the deceased on his stomach. The appellant then ran to

the deceased and stabbed him repeatedly when he had fallen down near the statue. PW-8 PN Bhosale, who was on duty at Sion Hospital for the purpose of maintaining Emergency Police Register heard the commotion in the Casualty Ward at about 10.20 p.m. He saw the appellant chasing a person with a knife. The appellant slipped due to the blood which had fallen on the ground. The knife which was in his hand also fell down. With the help of persons who had gathered there, PW-8 PN Bhosale caught the appellant.

5. It appears that PW-8 PN Bhosale phoned Matunga Police Station. PW-11 PSI Kolekar received the message. He passed on the message to PW-12 PI Mohd. Shaikh, who made the necessary station diary entry and left the police station for Sion Hospital along with API Sonawane and PW-11 PSI Kolekar. Statement of PW-1 Prakash was recorded by API Shinde and it was treated as FIR. It is at Ex-8. On the basis of the FIR, investigation was started. The appellant was arrested. Statements of the witnesses came to be recorded. The knife (article 1) which is the weapon of assault was seized under panchanama. Post-mortem was done on the deceased. After completion of investigation, the appellant came to be charged as aforesaid.

6. In support of its case, the prosecution examined as many as 12

witnesses. PW-1 Prakash, the brother of the deceased proved the FIR (Ex-8). PW-2 Vijay, who was injured in the incident turned hostile. The prosecution examined PW-3 Kisan and PW-4 Umesh, who are the injured eye-witnesses. The prosecution also examined PW-5 Shivanand, who was injured in the earlier incident. PW-6 Chandrakant proved the spot panchanama (Ex-17). PW-7 Dr. Sandhya Iyer deposed about the injury suffered by PW-2 Vijay and PW-4 Umesh and Vasant. She also deposed about the examination of the deceased conducted by her when the deceased was admitted in Sion Hospital. PW-8 PN Bhosale deposed about the arrest of the appellant. PW-9 Dr. Parab was also on duty at the Casualty Ward on the relevant day. He has also deposed about the examination of Vasant, PW-4 Umesh and the deceased conducted by him. PW-10 Dr. Vasant has proved the post-mortem notes which are at Ex-34. PW-11 PSI Kolekar and PW-12 PI Mohd. Shaikh were attached to the Matunga Police Station at the relevant time. They have given details of investigation. The appellant pleaded not guilty to the charges and claimed to be innocent. According to him, he has been falsely implicated.

7. After perusing the evidence on record, the learned Sessions Judge came to the conclusion that the prosecution has proved its case beyond reasonable doubt. He, therefore, convicted the appellant

for offence punishable under section 302 of the IPC and sentenced him to suffer life imprisonment and to pay a fine of Rs.5,000/- in default to suffer further rigorous imprisonment of four months. He convicted the appellant for offence punishable under section 307 of the IPC and sentenced him to suffer rigorous imprisonment for seven years and to pay fine of Rs.2,000/- in default to suffer rigorous imprisonment for two months. The said judgment is challenged in this appeal.

8. We have heard Mr. Chomal, the learned counsel appearing for the appellant and Dr. Shaikh, the learned A.P.P. appearing for the State. With the assistance of the learned counsel, we have gone through the evidence and the record.

9. Mr. Chomal, the learned counsel contended that PW-3 Kisan claims to be an eye-witness. He has stated in his evidence that his statement was recorded by the police immediately in the same night. However, the police have not treated this statement as FIR. The police have treated the statement of PW-1 Prakash recorded on 12/7/1997 at 1.35 a.m. as the FIR. Mr. Chomal contended that this creates a doubt about the prosecution story. According to him, time was taken by the police to concoct a false story. Mr. Chomal then contended that there are serious discrepancies in the evidence of

injured eye-witnesses PW-3 Kisan and PW-4 Umesh. PW-3 Kisan has stated that the deceased had suffered injury on his back. However, in fact, the medical evidence shows that there is no injury on the back of the deceased. Therefore, it is clear that PW-3 has not seen the actual assault on the deceased. Moreover, the statement of PW-4 has been recorded 10 days after the incident and no satisfactory explanation is given for the said delay. Therefore, evidence of this witness must also be discarded. He further submitted that the entire prosecution story that the prosecution witnesses went to Sion Hospital because PW-5 Shivanand was injured by pieces of broken glass is concocted. It appears that the prosecution witnesses had, in fact, gone to attack the appellant who was working as a badli worker in Sion Hospital. Mr. Chomal also contended that the injuries sustained by the deceased are serious injuries and they are not possible by the weapon (article 1). Mr. Chomal contended that it is the case of the prosecution that the deceased fell near the statue of Lokmanya Tilak however, in the spot panchanama (Ex-17) there is no reference to the statue of Lokmanya Tilak. Therefore, doubt is created about the scene of offence. Mr. Chomal also contended that there is great discrepancy as to exactly at what time the incident in question took place and the police have examined PW-9 Dr. Parab to cover up that lacune though his statement was not recorded by the police. PW-9 Parab is on good terms with the police and, hence, he

has tried to support the police though he has not seen any part of the incident. Mr. Chomal further contended that though the appellant had sustained bleeding injuries, the prosecution did not get the appellant medically examined. The prosecution has not explained as to how the appellant sustained the injuries and, therefore, adverse inference needs to be drawn against the prosecution. It is clear that the prosecution has suppressed the genesis of the case. In this connection, the learned counsel relied on the judgment of the Supreme Court in *Lakshmi Singh and others etc. v. State of Bihar, AIR 1976 SC 2263*. Mr. Chomal contended that in view of the glaring discrepancies in the evidence of the eye-witnesses and in view of the non-explanation of the injuries suffered by the appellant, this court should quash and set aside the conviction and sentence imposed on him under section 302 of the IPC. Mr. Chomal contended that in any case, if this court comes to the conclusion that the incident did take place it is the result of grave and sudden provocation given to the appellant by the prosecution witnesses. It is the case of the prosecution that PW-4 Umesh teased the appellant about a woman by name Nalu. The appellant told him that she is like his mother. Being enraged by the insinuation of the prosecution witness, the appellant seems to have assaulted the deceased. Therefore, at the most the appellant could be convicted under section 304 Part I of the IPC.

10. Dr. Shaikh, the learned A.P.P. on the other hand, contended that PW-3 Kisan and PW-4 Umesh are the injured witnesses. Their presence at the scene of offence can hardly be doubted. They are not likely to involve any innocent person as their assailant. The alleged discrepancies in their evidence are not major discrepancies. Their evidence is reliable and conviction of the appellant based on their evidence does not deserve to be disturbed. So far as the injuries suffered by the appellant are concerned, Dr. Shaikh contended that according to the Investigating Officer, the injuries were mere lacerations. The injuries were obviously not serious. Therefore, non-explanation of the injuries caused to the appellant is not fatal to the prosecution case. He submitted that in any case, if there is cogent evidence on record, non-explanation of the injuries suffered by the appellant will not disprove the prosecution case. He submitted that the appellant was caught on the spot while he was chasing the deceased. Apart from PW-3 Kisan and PW-4 Umesh, PW-9 Dr. Parab, who is an independent witness has also stated that he saw the appellant running with a knife and attacking the deceased. PW-8 PN Bhosale has also deposed about the appellant chasing the deceased with knife. The evidence on record is, therefore, sufficient to establish the complicity of the appellant. Dr. Shaikh submitted that the injuries suffered by the deceased are serious. They are on the

vital part of the body of the deceased. The manner in which the appellant chased the deceased and repeatedly stabbed the deceased indicates that there was an intention to kill the deceased. There is no evidence to indicate that any grave and sudden provocation was given by the deceased to the appellant. Therefore, there is no question of the appellant being convicted of the offence under section 304 Part I of the IPC. He submitted that no case is made out for disturbing the conviction of the appellant.

11. In our considered opinion, the evidence of the injured eye-witnesses PW-3 Kisan, PW-4 Umesh bears out the prosecution case. PW-3 Kisan has stated that on 11/7/1997 he was enjoying liquor near Lalpatra Chawl, Dharavi Road near public lavatory, with PW-4 Umesh, PW-2 Vijay, PW-5 Shivanand and others at about 8.30 p.m. At that time, the appellant and his friend Gabbar @ Raju came there. The appellant asked PW-5 Shivanand as to how they were enjoying liquor excluding him. At that time, PW-4 Umesh stated that he knew the appellant who visits Nalu. The appellant then rushed to assault him but others intervened in the quarrel. Thereafter, they were enjoying liquor and playing with empty bottles. The glass of a broken bottle caused bleeding injury above the eye-brow and near the chin of PW-5 Shivanand. Therefore, they took PW-5 Shivanand to Sion Hospital in a taxi. PW-5 Shivanand was treated by doctors in the

Casualty Ward. PW-2 Vijay and one Daji Parab went outside to bring juice for PW-5 Shivanand. According to this witness, he was near PW-5 Shivanand. After sometime, the deceased and others were sitting on a bench near the Casualty Ward. They saw the appellant chasing the deceased with knife. The deceased had a bleeding injury on his back. According to this witness, he also started running to catch the appellant so as to save the deceased. However, the deceased fell on the ground and the appellant again stabbed the deceased in his stomach. He tried to catch the appellant but the appellant showed him the knife and assaulted him with it. Hence, he ran away to save himself. He has further stated that the deceased was lying near the statue of Lokmanya Tilak in the open ground. After sometime, he came to know that the deceased had succumbed to his injuries. When knife (article 1) was shown to him, this witness stated that it was the same knife with which the appellant had stabbed the deceased.

12. It was argued that PW-3 Kisan was with PW-5 Shivanand and, therefore, he could not have seen the incident. There is no merit in this submission. The spot panchnama states that bloodstains were found in the middle of the Casualty Department. PW-9 Dr. Parab who was on duty at the Casualty Ward on the relevant date has stated that initially the appellant stabbed the deceased in the

Casualty Ward and other injuries were caused by him away from the Casualty Ward as the deceased was running away. According to Dr. Parab, the incident took place in the Out Patient Department (OPD) in the building compound. Therefore, the incident has partly taken place in the Casualty Department and partly outside. If PW-3 was in the Casualty Ward with PW-5 Shivanand, he was bound to see the incident. PW-3 has, no doubt, stated that he was in the Casualty Ward, but he has not stated that he continued to remain inside. Besides PW-5 Shivanand who was admitted in the Casualty Ward has stated that he saw the incident partly. The bench on which PW-3 was sitting with others was near the Casualty Ward. In these circumstances, claim of the witnesses that they had seen the incident cannot be doubted.

13. PW-4 Umesh has also stated that at about 9.00 p.m. he was drinking liquor along with PW-5 Shivanand, PW-2 Vijay, PW-3 Kisan, the deceased and Daji Parab in the open place near the public latrine at Lalpatra Chawl, Dharavi. At that time, the appellant came there. He teased the appellant by saying that he visits Nalu who resides in his neighbourhood. The appellant misunderstood him. The appellant told him that Nalu was like his mother. Therefore, a quarrel took place between the two. Friends who were present there intervened in the quarrel and separated the two. After drinking

liquor, PW-5 Shivanand and PW-3 Kisan were playing with empty bottles. PW-5 Shivanand got injured by the piece of broken glass. He suffered a bleeding injury. They took him by taxi to Sion Hospital. At Sion Hospital, he was treated by the doctor in the Casualty Ward. According to this witness, he went for tea with the deceased and Daji Parab in the canteen of the hospital. PW-3 Kisan was near PW-5 Shivanand. They came back after tea. PW-5 Shivanand told them that he wanted juice. So, Daji went to bring juice. At that time, the appellant came there and started assaulting the deceased. He stabbed the deceased in his chest. This witness went to rescue the deceased. The deceased started running away. The appellant stabbed him on his left leg. After that, the appellant chased the deceased with knife. He caught the deceased near the statue in the hospital. According to this witness, he saw the deceased lying on the ground and the accused was stabbing him with knife. The accused stabbed the deceased in his stomach twice or thrice. As he had a bleeding injury, he could not see minutely on which part of the person of the deceased the injuries were caused. Thereafter, the deceased was carried to the hospital. After sometime, he came to know that the deceased had succumbed to his injuries. He has also referred to the presence of PW-3 Kisan. He has stated that PW-3 Kisan rushed to save the deceased but the appellant threatened him with knife and, therefore, PW-3 Kisan ran away. According to this

witness, after the assault on the deceased, the security guards caught the appellant. The police rushed there and took him in their custody. When knife (article 1) was shown to this witness, he stated that it is the same knife with which the appellant stabbed the deceased.

14. Mr. Chomal contended that the statement of this witness was recorded after 10 days and, therefore, no reliance should be placed on him. This submission deserves to be rejected. PW-11 PSI Kolekar has stated that as the condition of the injured was serious the doctor did not allow him to record their statements. PW-7 Dr. Iyer who had examined this witness has stated that he had suffered incised wound 4 cm muscle deep and it was actively bleeding. He was also operated upon by cardiac surgeon D. Ravindra Shetty. In such circumstances, if there is delay in recording the statement of this witness, it does not affect his credibility. His evidence appears to us to be consistent.

15. We find that the criticism levelled by Mr. Chomal that there are serious discrepancies in the evidence of PW-3 and PW-4 is baseless. Both these witnesses have stated that they were having liquor at about 9.00 p.m. at Lalpatra Chawl, Dharavi. They have stated that PW-5 Shivanand and the deceased were also with them. They have also stated that the appellant came there and PW-4 Umesh teased

him about one lady by name Nalu. The appellant was enraged because of this. A quarrel took place between PW-4 Umesh and the appellant. They separated the two. Thereafter, PW-5 Shivanand and PW-3 Kisan were playing with empty bottles. PW-5 Shivanand was injured by a piece of broken bottle. They took him to Sion Hospital. At Sion Hospital, PW-5 Shivanand was treated in the Casualty Ward. PW-5 Shivanand asked for juice and, therefore, two of them went outside to bring juice. Both these witnesses have said that when they were near the Casualty Ward, the appellant came there and he started assaulting the deceased. When they tried to rescue the deceased, the appellant attacked them with knife. The fact that both these witnesses have suffered injuries cannot be denied because their injury certificates are on record and this fact is also not denied by the defence. Both these witnesses have stated that the knife (article 1) was used by the appellant to assault the deceased. Both have stated that the appellant stabbed the deceased. There is, therefore, consistency between the evidence of these two witnesses. Minor discrepancies as to the sequence of events will not make them unreliable witnesses. They are injured witnesses. Their presence at the scene of offence cannot be disputed. They are unlikely to involve the wrong persons. It is true that PW-3 Kisan has said that the deceased was assaulted on his back. However, there was no injury on the back of the deceased. We do not feel that this would affect the

credibility of this witness. He has stated that he had seen the appellant chasing the deceased with knife and the deceased was having bleeding injury on his back at that time. It is possible that since the blood was oozing out, this witness got an impression that the injury was on the back of the deceased. Since according to him, he had noticed bleeding injury on the back of the deceased while the deceased was running, he might not have clearly seen the injury. This criticism of Mr. Chomal is, therefore, unacceptable to us. It is true that PW-3 Kisan has said that his statement was recorded immediately after the incident on the same night. However, no question is asked to the Investigating Officer about this. It was argued that the police ought to have treated this statement as FIR rather than treating the statement of PW-1 Prakash which was recorded on 12/7/1997 at 1.35 a.m. as FIR. It was necessary for the defence to ask a specific question to the Investigating Officer in this behalf. The Investigating Officer, could have given an explanation for this. In the absence of this, we are not in a position to conclude that the police have suppressed statement of PW-3 Kisan. It is also not possible for us to hold that the police have manufactured the FIR. We do not feel that in this case, the prosecution has concocted a case. No such circumstances are present in this case. On the basis of the evidence of the two injured witnesses, we find no difficulty in concluding that the appellant had assaulted the deceased with knife.

16. Besides, the evidence of this witnesses is supported by the evidence of PW-8 PN Bhosale, who was on duty at Sion Hospital on that day. It is pertinent to note that the appellant used to work in Sion Hospital as badli worker. According to this witness, at about 10.20 p.m. on 11/7/1997, he heard a commotion in the Casualty Ward. On hearing the commotion, he went to the spot. He saw a person of about 30 years of age running with knife behind a person, who was about 20 years old. Due to assault made by the person having knife, the injured fell on the ground. The person having knife was caught hold of by one person who was chasing him but because the person with knife brandished the knife towards him, that person ran away. The other person, who was chasing the person having knife was also stabbed in the stomach by the person having knife. According to this witness, the injured who had fallen down, stood up and went to the Emergency Ward. The person having knife stabbed on the leg of one person and he again stabbed one other person and, thereafter, he tried to run towards the main gate of the hospital. However, due to the blood stains, he slipped. Knife which was in his hand also fell down. Thereafter, with the help of persons present there, he caught hold of the said person. He inquired about the persons who were assaulted by that man and he came to know that their names were Vikas (the deceased) Vijay (PW-2), Umesh (PW-4).

He then phoned Matunga Police Station. PW-11 PSI Kolekar came to the spot along with PW-12 PSI Mohd. Shaikh. He identified the knife (article 1) as the knife which was used by the appellant. He identified the appellant as the same person who was caught by him.

17. PW-9 Dr. Parab was on duty at the Casualty Ward of Sion Hospital on the relevant day i.e. on 12/7/1997. He has stated that he had partly witnessed the incident. He has stated that he saw the deceased being assaulted by the appellant with knife on abdomen and chest. He has stated that initially the appellant stabbed the deceased in the Casualty Ward and other stab injuries were caused by him away from the Casualty Ward as the deceased was running away. The incident took place in the OPD in the building compound. He has stated that there is a statue of Lokmanya Tilak within the building of OPD. Evidence of PW-8 PN Bhosale and the evidence of PW-9 Dr. Parab support the evidence of the injured witnesses PW-3 Kisan and PW-4 Umesh. In our opinion, PW-9 Dr. Parab is an independent witness. He was, in fact, on duty at the Casualty Ward. He has no reason to falsely implicate the appellant. Mr. Chomal, the learned counsel for the appellant contended that PW-9 Dr. Parab is out to please the police. According to him, some of these doctors are extra friendly with the police; they have social relations with the police; they have drinks together and, therefore, PW-9 Dr. Parab

must have obliged the police. We must express our disapproval of this argument. There is absolutely no basis for this argument. Not a single suggestion is made to PW-9 Dr. Parab that he was friendly with the police or that he was having drinks with the police and, therefore, he was obliging the police for any extraneous reason. We are unhappy at the fact that such serious allegations should be levelled against a professional without there being any basis for the same. One cannot cast aspersions on anybody least of all on an independent person like a doctor without there being an iota of evidence for such aspersions. We deprecate this practice. It is argued that PW-9 Dr. Parab's statement was not recorded by the police. But the police are not confronted with this case. We, therefore, cannot take note of such allegation. In our opinion, PW-8 PN Bhosale and PW-9 Dr. Parab have corroborated the evidence of PW-3 Kisan and PW-4 Umesh.

18. We also find no substance in the submission that though PW-6 Chandrakant, the panch witness has referred to the statue of Lokmanya Tilak in his evidence, there is no mention of the statue in the panchanama (Ex-17) and, therefore, the incident has not taken place in the manner in which it is alleged by the prosecution. PW-6 Chandrakant has in his evidence stated that there is a statue of Lokmanya Tilak in the compound. PW-9 Dr. Parab has also deposed

about it. The prosecution witnesses have referred to this statue and have stated that the deceased fell near the statue. Merely because there is no reference of the statue in the panchanama, it cannot be said that the prosecution case is false.

19. We also do not find any substance in Mr. Chomal' ssubmission that the prosecution case that PW-5 Shivanand was injured and was taken to Sion Hospital for treatment is false. PW-5 Shivanand has been examined. He has deposed about this. He has been cross-examined. His cross-examination has not damaged his testimony. There is no reason to disbelieve this story. Besides PW-3 and PW-4 have also stated about this. These witnesses have also been cross-examined. Their credibility is not impeached in the cross-examination. Besides the witnesses have also stated that the sister of their friend was admitted in the hospital after a vehicular accident and, therefore, they had gone to see her. The reason for the deceased and the prosecution witnesses to go to the hospital is, therefore, established beyond doubt.

20. Another very important aspect of the matter is that the appellant was arrested on the spot. PW-8 Bhosale has stated about

this. This witness had seen him carrying the knife and the knife was recovered from the spot of incident. Chemical Analyser' s report indicates that the knife was stained with human blood. Immediate arrest of the appellant on the spot is a clinching circumstance against the appellant. We have, therefore, no hesitation in concurring with the trial court that the appellant assaulted the deceased as well as the prosecution witnesses and is guilty of offence under section 302 as well as under section 307 of the IPC.

21. Mr. Chomal contended that the appellant had suffered injuries which the prosecution has not explained. He contended that the prosecution did not get the appellant medically examined and, therefore, adverse inference needs to be drawn against the prosecution. In this connection, he relied upon the judgment of the Supreme Court in *Lakshmi Singh' scase (supra)..* It is true that in *Lakshmi Singh' scase (supra)*, the Supreme Court has stated that the non-explanation of the injures sustained by the accused at about the time of the occurrence or in the course of altercation is a very important circumstance from which the Court can draw the following inferences :

(1) that the prosecution has suppressed the

genesis and the origin of the occurrence and has thus not presented the true version;

(2) that the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and therefore their evidence is unreliable; and

(3) that in case there is a defence version which explains the injuries on the person of the accused, it is rendered probable so as to throw doubt on the prosecution case.

The Supreme Court has further observed that the omission on the part of the prosecution to explain the injuries on the person of the accused assumes much greater importance where the evidence consists of interested or inimical witnesses or where the defence gives a version which competes in probability with that of the prosecution. In the same judgment, however, the Supreme Court has said that there may be cases where the non-explanation of the injuries by the prosecution may not affect the prosecution case. It is further observed that this principle would obviously not apply to cases where the injuries sustained by the accused are minor and superficial or

where the evidence is so clear and cogent, so independent and disinterested, so probable, consistent and creditworthy, that it far outweighs the effect of the omission on the part of the prosecution to explain the injuries. In our opinion, in this case, the evidence adduced by the prosecution is of injured witnesses. It is consistent and cogent. Apart from the evidence of the injured witnesses, there is evidence of an independent witness i.e. PW-9 Dr. Parab. The evidence of these witnesses, in our opinion, clearly establishes the prosecution case. Besides, the appellant has not given his version of the prosecution case. Therefore, there is no question of the appellant trying to probabilise his case. In his statement recorded under section 313 of the Criminal Procedure Code, the appellant has merely denied the prosecution case. In his evidence, PW-11 PSI Kolekar has stated that the injuries suffered by the appellant were in the nature of laceration. Therefore, the injuries do not appear to be serious. Since the evidence adduced by the prosecution is beyond reproach it outweighs the effect of the omission on the part of the prosecution to explain the injuries sustained by the appellant. In the light of the observations of the Supreme Court in *Lakshmi Singh' scase (supra),* in the facts of this case, it must be held that non-explanation of the injuries on the person of the appellant would not adversely affect the prosecution case. This submission of Mr. Chomal must be, therefore, rejected.

22. We are also not impressed by the argument of Mr. Chomal that the accused could, at the most, be convicted under section 304 Part I of the IPC. PW-10 Dr. Vasant has done the post-mortem on the deceased. The post-mortem notes describe the injuries suffered by the deceased as follows :

> "(1) Body of 40 years old male with averagely built and nourishment.
>
> (2) Stab injuries are seen (i) lt. Chest - 2nd I.C.S. ant 3 cm x 1 cm x lung deep (2) 9th I.C.S. lt. Side 1 cm x ½ cm x sc deep at mid line with friction abrasion ant.
>
> (3) Rt. hypochondriacs subcostal – 4 cm colour pouting out ant.
>
> (4) Rt. side umbilicus 3 cm x ½ cm x pesitoreum deep
>
> (5) Lt. groin 3 cm x ½ cm x sub-cut deep."

23. PW-10 Dr. Vasant has stated that injury No.1 i.e. the injury on the left side of chest was sufficient to cause death in the ordinary course of nature. There can be no doubt that these injuries were serious and were inflicted on the vital part of the body of the deceased. The appellant did not rest content with one blow. He repeatedly stabbed the deceased. There is no evidence to establish that there was any grave and sudden provocation given to the appellant at the time when the attack was made. The teasing incident had taken place at about 8.30 p.m. Thereafter, the appellant came with a knife and attacked the deceased and others in the hospital. Premeditation is clearly indicated in the conduct of the appellant. He mercilessly attacked the deceased and also attacked those who went to save the deceased. He was drunk. It is not the case of the appellant that he was on duty at Sion Hospital at the relevant time. Therefore, he had definitely gone there with an intention to kill the deceased. Case of murder is, therefore, clearly made out. Mr. Chomal contended that the appellant is a Government employee. He is in home-guard. He has four daughters of marriageable age and, therefore, a kindly view may be taken. We are unable to do so. The appellant does not deserve any sympathy. He has attacked persons, who went to save the deceased mercilessly. He repeatedly stabbed the deceased. Because of this conduct, no mercy

can be shown to him. The fact that he is a Government employee or he is in home-guard or he has four daughters of marriageable age would not persuade us to give him a lesser punishment. The court must also show regard for the sentiments of the kith and kin of the victims. In our opinion, the prosecution has proved its case beyond reasonable doubt. Hence, the appeal is dismissed.

(SMT. RANJANA DESAI, J.)

(D.G. KARNIK, J.)